

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

JAMES DANIEL BLAKEY :
 REG. NO. 30824-044 :
 :
 PETITIONER :
 :
 vs. :
 :
 WARDEN, FCI BECKLEY :
 BUREAU OF PRISONS FACILITY :
 WEST VIRGINIA :
 DEFENDANT :
 :
 UNNAMED MEDICAL PERSONNEL :
 BUREAU OF PRISONS FACILITY :
 BECKLEY, WEST VIRGINIA, FCI :
 :
 DEFENDANT(S) :
 :

CIVIL NO. 5:08-0860CIVIL RIGHTS COMPLAINT PURSUANT
TO TITLE 28, U.S.C. § 1331
(A BIVENS ACTION)JURISDICTION

James Daniel Blakey is a citizen of the State of Missouri who currently resides at the United States Medical Center for Federal Prisoners located at P. O. Box 4000, Springfield, MO. 65801-4000.

First Defendant, Warden at F.C.I. Beckley, Bureau of Prisons Facility located at Beckley, West Virginia is a citizen of the State of _____, and is employed as the Warden of the facility in question, i.e. F.C.I. Beckley. At the time of the claims alleged in the complaint the Defendant was acting under color of federal law. In support thereof Petitioner offers the below:

1. Defendant Number 1, Warden of F.C.I. Beckley is the supervising authority of the entire operation of the facility

and its employees.

All other unnamed Defendants are employees of the Federal Government and were acting under color of federal law at the time the alleged violations took place. (See Attachment)

Jurisdiction is invoked pursuant to Title 28, U.S.C. §1331 and Bivens v. Six Unnamed Agents, 403 U.S. 383, 91 S. Ct. 1999 (1991) because the Defendants were acting under the color of federal law.

Venue is invoked pursuant to Title 21 U.S. §1391 (b).

NATURE OF CASE

Petitioner asserts that he suffered permanent and partial disability, pain and disfigurement, lack of pain medications, negligent medical care, improper medical care and services, deliberate indifference while confined at F.C.I. Beckley of the Federal Bureau of Prisons located in West Virginia during specified periods of October, November, and December of 2006.

Petitioner was denied Constitutional rights and was subjected to cruel and unusual punishment, denied his due process right of law under the Fifth and Fourteenth Amendments as well as the denial of rights under the Eighth Amendment to the United States Constitution.

Petitioner filed numerous Administrative Grievances in the institution as is required and received negative responses to his complaints.

CAUSE OF ACTION

Petitioner alleges that his Fifth, Eighth and Fourteenth Amendment rights under the United States Constitution were violated and in support thereof he offers:

COUNT I. DELIBERATE INDIFFERENCE

All of the named and un-named defendants in the enclosed action while acting under color of federal law showed a "deliberate indifference" to the complaints, pain, suffering and the lack of medical care and treatment in this case.

Dr. Walker is the Orthopedic Specialist at F.C.I. Beckley and was aware of the conditioner through direct contact with the Petitioner.

Dr. Thompson is the Clinical Director at F.C.I. Beckley and is the medical department's authority regarding the approval and/or disapproval of surgery requests and other significant medical procedures as needed.

Dr. McClain was on eof the doctors who after seeing the Petitioner denied adequate and sufficient medical care and attention to Petitioner.

Nurse Lindsey an employee at F.C.I. Beckley is one of the defendants who was also involved in Petitioner being denied treatment and who conspired with other staff to have Petitioner placed in Administrative Detention as a result of his medical complaints.

Ms. Smalls, was the Associate Warden at the time of these complaints and who also conspired to deny treatment and have Petitioner placed in locked down status for complaining.

had direct supervision over all employees during the time of the alleged violations of Petitioner's constitutional rights.

Dr. Zahir is the Surgeon from the outside Hospital who performed the negligent surgery on Petitioner.

Count II. RIGHT TO DUE PROCESS OF LAW VIOLATED:

All of the defendants in this action violated Petitioner's rights (constitutional) to due process of law in that the Petitioner was subject to the deprivation of his right to be "free from an abuse of discretion" on the part of administrative officials, and, Petitioner was subject to unconstitutional administrative action resulting from making complaints to FBOP (Federal Bureau of Prisons) staff concerning his medical state.

Count III. CRUEL AND UNUSUAL PUNISHMENT:

All of the above defendants caused the Petitioner to suffer from Cruel and Unusual punishment in violation of the United States Constitution.

In essence and in fact the defendants violated the Petitioner's Fifth, Eighth and Fourteenth Amendment rights under the Constitution.

PROCEDURAL HISTORY

1. The Administrative relief that was sought by Petitioner relating to claims herein are as follows:

a. Petitioner followed institutional Administrative Remedy Procedures as outlined in Program Statement No.# 1330.30.

2. Another lawsuit was initially filed in federal court by Petitioner relating to this cause as follows:

A. United States District Court-Southern District of West Virginia

Docket No.#5:06-CV-01044.

The defendants in that action were:

a. Warden at F.C.I. Beckley

Disposition:

Petitioner filed a voluntary Motion To Withdraw Civil Action on June 19, 2007 pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and the Motion was granted without prejudice by United States Magistrate Judge Mary E. Stanley on June 21, 2007. (See ORDER)

The issues raised are the same as in this action but were raised under the wrong statue and code, thus the reason for the voluntary Withdrawal Motion by Petitioner.

Petitioner has previously sought informal and formal relief from the appropriate administrative officials regarding the acts complained of herein by filing the required Administrative Remedies as outlined in Bureau of Prisons Program Statement, Number 1330.03 (See BP-8 thru BP-11).

REQUESTED RELIEF

Petitioner believes that he is entitled to the following relief:

- a. Compensatory and Punitive damages in the amount of two million dollars.
- b. Corrective surgery at the Bureau's expense.
- c. Any further relief the court deems appropriate.

I hereby declare under paenalty of perjury that the foregoing is true and correct.

EXECUTED THIS 18 DAY OF June, 2008.

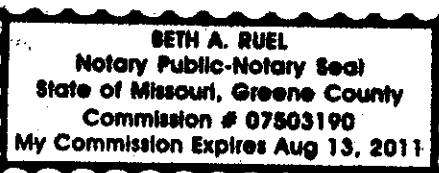
James Daniel Blakey
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JAMES DANIEL BLAKELY
PETITIONER REG. NO. 30824-044
U.S. MEDICAL CENTER FOR FEDERAL
PRISONERS
P. O. BOX 4000
SPRINGFIELD, MISSOURI 65801

DATED: 6/18/08

NOTARY PUBLIC

Beth Ruel



CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A TRUE AND CORRECT COPY OF THE ENCLOSED APPLICATION FOR RELIEF PURSUANT TO TITLE 28 §1331 HAS BEEN MAILED TO THE BELOW PARTIES THIS 18th DAY OF June, 2008. POSTAGE FIRST CLASS PREPAID VIA THE INSTITUTIONAL LEGAL MAIL SYSTEM AT UNITED STATES MEDICAL CENTER FOR FEDERAL PRISONERS AT SPRINGFIELD, MO.

MAILED TO:

CLERK OF THE COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF WEST VA

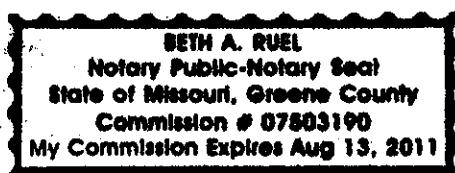
UNITED STATES ATTORNEY'S OFFICE
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF WEST VA



JAMES DANIEL BLAKEY
PETITIONER

DATED: 6/18/08

NOTARY PUBLIC: Beth A. Ruel



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

ATTACHMENT TO TITLE 28 § 1331 BIVENS ACTION

Petitioner desires to submit this Attachment to his §1331 to further explain the Cause of Action in this matter:

The federal court has the power to adjudicate an inmate's complaint about medical treatment and requires that a federal right be involved in the medical treatment. Petitioner's right to due process of law to be free from the abuse of discretion on the part of administrative officials and protection from unconstitutional administrative action, and protection of an inmates life and health are supported by the federal court.

The Petitioner has a right to be free from cruel and unusual punishment according to the Eighth Amendment, especially since there has been an intentional denial of needed medical care and treatment and when the institutional administrators (defendants) indicate a deliberate indifference to the medical needs of Petitioner.

The deliberate indifference in this cause can and will be proven through evidence on record, through the display of many exhibits by the Petitioner.

The defendants were aware of and knew and disregarded the excessive risks to Petitioner's health, and this was done by defendants while in a culpable state of mind.

Bureau of Prisons staff are required to provide the best reasonably available treatment and this was not done in this case.

Petitioner desires that the Court ORDER The Defendants to
Show Cause why the requested relief should not be granted.



JAMES DANIEL BLAKEY
REG. NO 30824-044
U.S. MEDICAL CENTER
P. O. BOX 4000
SPRINGFIELD, MO 65801-4000

DATED: 6-18-08



James Blakey # 30824-044
Springfield Medical Prison
P.O. Box 4000, Springfield, Mo. 65801 19
12-2008

UNITED STATES DISTRICT COURT
S. DIST. W. VIRGINIA P.O. DRAWER
5009 Beckley v. Virginia 25801

12/11/2008 12:00 PM

U.S. Medical Center for Federal Prisoners
P.O. Box 4000, MO 65801
Springfield, Missouri 65801
The enclosed letters were processed to you. The writer raises a
mailing neither opened nor inspected, in which the writer encloses
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question, or problem, or clarification, to another address.
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further correspondence the enclosures, please return the writer address.
Identified by _____
(Printed Name) _____
Date _____